

July 3, 2007

MEMORANDUM TO: Annette L. Vietti-Cook, Secretary

FROM: Chairman Klein /RA/

SUBJECT: REQUEST FOR RECONSIDERATION OF THE WORDING OF
10 C.F.R. § 26.205(d)(4) AS AFFIRMED ON APRIL 17, 2007

As documented in the Staff Requirements Memorandum (SRM) dated April 17, 2007, the Commission affirmed and approved on that date a final rule amending 10 CFR Part 26 governing the domestic licensing of production and utilization facilities to revise, reorganize, and clarify drug and alcohol testing programs. The final rule also establishes requirements for managing worker fatigue at operating nuclear power plants. The Commission voted to approve the publication and implementation of this final rule, subject to the comments and changes provided in the attachment to the Affirmation Notice. The fatigue requirements in the rule are not to be effective until 18 months after publication of the final rule.

One specific change from the proposed draft final rule, based on my initiative during the development of the SRM, was to replace "working on unit outage activities" with "solely performing outage activities" in the first sentence of § 26.205(d)(4). See SRM of April 17, 2007 (Item 15 of the Comments and Changes to the Final Rule in SECY-06-0224). This section of the rule addresses the limits on plant personnel work hours and distinguishes between work performed on an operating plant and a plant that is in an outage. The change to the wording was intended as a simple clarification. I now believe it was a mistake for me to suggest it without fuller consideration. It could result in unintended consequences that are potentially significant and could impede final implementation of the rule. The Nuclear Energy Institute has submitted letters of April 24, 2007, and May 8, 2007, in which it alleges potential impacts on nuclear safety, staffing, collective bargaining agreements, and costs of implementation. I am also concerned that the change in language may prompt much greater consideration of waiver requests, which is an undesirable outcome for a new rule provision.

In my view, sufficient questions are raised by this particular late change in rule language to warrant a Commission decision, as a matter of policy, to revert to the language "working on unit outage activities" as proposed by staff in the draft final rule that was before the Commission and available to the public when the Commission affirmed the final rule on April 17, 2007. As planned, the staff should continue to engage the industry and other stakeholders to complete the regulatory guidance for this rule, with the restored language.

Therefore, I recommend that the Commission agree to reconsider the change in language in 26.205(d)(4) and support prompt affirmation on this proposal to modify the final rule by restoring the words "working on outage activities" in place of "solely performing outage activities" in the first sentence of § 26.205(d)(4) and any other pertinent sections.

cc: Commissioner McGaffigan
Commissioner Jaczko
Commissioner Lyons
OGC
EDO